



# Implementing Sustainable Development Goals in Kenya: Legislative and Policy Review

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## ABSTRACT

The Sustainable development goals are contained in paragraph 54 of the UN resolution A/RES/70/1 of September 2015. They were achieved through a collaborative process of 194 countries, civil society and other interested parties.<sup>1</sup> They succeed the Millennium Development Goals. The 17 Sustainable Development Goals were formulated following the principles agreed upon under resolution A/RES/66/288 which is also known as *The Future We Want*. The passing of the *Transforming our world: the 2030 Agenda for Sustainable Development* was a long process involving deliberations and consultative meetings starting from Rio+20 Conference in 2012.<sup>1</sup> Kenya made a commitment to actualize the 17 SDGs. However, Kenya runs the risk of failing to achieve the 17 sustainable development goals and their 169 targets if the challenges that led to the failure to achieve MDGs are not addressed. The most notable challenge was the failure to anchor the policy goals within the legal framework. This paper examines the legislative and policy gaps in the implementation of SDGs in Kenya. It will also explore the challenges that Kenya is facing in the implementation of Sustainable Development Goals and propose possible solutions to those problems.

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## Introduction

The Sustainable development goals are contained in paragraph 54 of the UN resolution A/RES/70/1 of September 2015. They were achieved through a collaborative process of 194 countries, civil society and other interested parties.<sup>1</sup> They succeed the Millennium Development Goals. The 17 Sustainable Development Goals were formulated following the principles agreed upon under resolution A/RES/66/288 which is also known as *The Future We Want*. The passing of the *Transforming our world: the 2030 Agenda for Sustainable Development* was a long process involving deliberations and consultative meetings starting from Rio+20 Conference in 2012.<sup>2</sup> During the same time the African Union was also working on a similar transformational framework for economic growth known as Agenda 2063. Agenda 2063 outlined ways and means of achieving social-economic progress based on the past and present initiatives. Agenda 2063 was adopted by the African Union General Assembly upon attaining 50 years since its formation.<sup>3</sup> Kenya made a commitment to actualize the 17 SDGs and Agenda 2063. There is a clear convergence between *Transforming our world: the 2030 Agenda for Sustainable Development* and *The Africa we want Agenda 2063*.

The African Union resolved that Agenda 2063 and the 17 Sustainable Development Goals will be implemented concurrently.

One of the failures of the Millennium Development Goals was the lack of legislative framework for actualizing these goals in developing and least developing countries. Some of the goals and their targets were too broad and lacked specificity. A case in point is Goal 7 of the MGS on ensuring sustainable development. A closer look on goal 7B stated that reduce biodiversity loss by 2010, achieving a significant reduction in the rate of loss.<sup>4</sup> This target is not specific and any country would have considered to have met this target by reducing biodiversity loss by 1%.

There is also no clear definition of what the word significant meant in the target. In addition to lacking specificity, the MDGs lacked a coherent framework on how the goals would be achieved in developing and least developing countries.<sup>5</sup> *Transforming our world: the 2030 Agenda for Sustainable Development* has avoided most of those gaps that were contained in the Sustainable Development Goals by requiring governments to report on their progress on a yearly basis. The 17 SDGs have 169 targets that are specific and outline what a country must achieve in order to be considered to have met that goal. It is also important to recognize that the MDGs were not a total failure but they achieved 'significant' progress in the developing world.

<sup>1</sup>Griggs, D., Stafford-Smith, M., Gaffney, O., Rockström, J., Öhman, M.C., Shyamsundar, P., Steffen, W., Glaser, G., Kanie, N. and Noble, I., 2013. Policy: Sustainable development goals for people and planet. *Nature*, 495(7441), pp.305-307.

<sup>2</sup>Ibid note 1

<sup>3</sup>Turner, S., Cilliers, J. and Hughes, B., 2014. Reducing poverty in Africa: realistic targets for the post-2015 MDGs and Agenda 2063.

<sup>4</sup>Sachs, J.D., 2012. From millennium development goals to sustainable development goals. *The Lancet*, 379(9832), pp.2206-2211.

<sup>5</sup>Clemens, M.A., Kenny, C.J. and Moss, T.J., 2007. The trouble with the MDGs: confronting expectations of aid and development success. *World development*, 35(5), pp.735-751.

The number of people living under \$1.25 a day in 2000 reduced from 1.9 billion to 896 million in 2015.<sup>6</sup> The goal of achieving universal enrolment in education was missed by a narrow margin from 83% in 2000 to 91% in 2015. Between 2000 and 2015 global mortality rate reduced by half narrowly missing the target of reducing by two-thirds.<sup>7</sup> The goal of halting and reducing the spread of HIV/AIDS was not achieved but the number of new infections have reduced by 40%. The target of reducing the number of people without access to clean drinking water was achieved in 2010, five years ahead of schedule. 2.6 billion people have gained access to improved cleaning water since the 1990s but still 663 million people across the world do not have access to improved cleaning water.<sup>8</sup>

Despite the success of the millennium development goals across the world, the majority of the African countries have remained with stunted economic growth, high levels of poverty and reduced access to healthcare services.<sup>9</sup> Africa suffers the harmful effects of climate change and yet it contributes less than 5% of the global Carbon dioxide emissions. According to Global Carbon Atlas, Kenya is number 96 in the top polluters with a carbon foot print of 14 MtCO<sub>2</sub>. Sub-Saharan countries such as Kenya missed the mark of the millennium development goals by a very wide margin.<sup>10</sup> Only Burkina Faso and Equatorial Guinea were able to reduce extreme poverty and hunger which was the first goal of the MDGs.<sup>11</sup>

Kenya runs the risk of failing to achieve the 17 sustainable development goals and their 169 targets with the current trend. This paper will explore the legislative and policy gaps in the implementation of SDGs in Kenya. It will also explore the challenges that Kenya is facing in the implementation of Sustainable Development Goals and propose possible solutions to those problems.

### Gaps in the SDGs

#### Data Availability Gap

Monitoring and implementation of the 17 SDGs is crucial to ensuring that those goals are achieved. Kenya lacks publicly available data which can be used to monitor and implement sustainable development goals. Kenya does not have up-to-date publicly available data to track and measure the progress of the implementation of the sustainable development goals. Most of the information that is publicly

available cannot be easily accessed online.<sup>12</sup> The publicly available information and reports are compiled by the non-governmental organizations especially on access to health and HIV/AIDS. Without the publicly available and verifiable data, it is extremely difficult for the citizens of Kenya to track and monitor the implementation of the Sustainable Development Goals.<sup>13</sup> Without publicly available data on the SDGs, citizens and external groups cannot keep the governments accountable to their commitments.<sup>14</sup> UN Member States are required to report on the progress made in relation to the sustainable development goals. Kenya complied with this obligation in 2017 Report demonstrating that Kenya was making progress along Sustainable Development Goals themes just one year after the adoption of *Transforming our world: the 2030 Agenda for Sustainable Development* by the United Nations. The report did not focus on all the indicators.

#### Gaps in the Skillset

There is a clearly visible gap in the data management and the integration of the data in policy management. Achieving the sustainable development goals is not only a legal endeavor but also a political one.<sup>15</sup> There is little political initiative to drive the country towards achieving the sustainable development goals. Kenya requires policy experts and data management professionals who will spearhead the country into achieving the sustainable development goals. With a devolved system of government, each county has an integral role to play in the attainment of the sustainable development goals.<sup>16</sup> In order to achieve a uniform progress in Kenya, there is a need for data management professionals to advise the county government on sustainable development policy. The sustainable development goals are also seen by the county government as a responsibility of the national government and as such they are not prioritized in the development programs of the county governments.<sup>17</sup> As such there is need for qualified personnel in both county governments and the national government to advise both levels of governments on the implementation of the SDGs.<sup>18</sup>

#### Resource Allocation and Mobilization

Kenya is high likely to fail to achieve all the goals of the SDGs because of the preferential allocation of funds to some

<sup>12</sup>Hák, T., Janoušková, S. and Moldan, B., 2016. Sustainable Development Goals: A need for relevant indicators. *Ecological Indicators*, 60, pp.565-573.

<sup>13</sup>Ibid note 12.

<sup>14</sup>Ibid note 12.

<sup>15</sup>Iddrisu, I. and Bhattacharyya, S.C., 2015. Sustainable Energy Development Index: A multi-dimensional indicator for measuring sustainable energy development. *Renewable and Sustainable Energy Reviews*, 50, pp.513-530.

<sup>16</sup>Frelat, R., Lopez-Ridaura, S., Giller, K.E., Herrero, M., Douchamps, S., Djurfeldt, A.A., Erenstein, O., Henderson, B., Kassie, M., Paul, B.K. and Rigolot, C., 2016. Drivers of household food availability in sub-Saharan Africa based on big data from small farms. *Proceedings of the National Academy of Sciences*, 113(2), pp.458-463.

<sup>17</sup>Buse, K. and Hawkes, S., 2015. Health in the sustainable development goals: ready for a paradigm shift?. *Globalization and health*, 11(1), p.13.

<sup>18</sup>Barth, M., Adom̄ent, M., Fischer, D., Richter, S. and Rieckmann, M., 2014. Learning to change universities from within: a service-learning perspective on promoting sustainable consumption in higher education. *Journal of Cleaner Production*, 62, pp.72-81.

<sup>6</sup>Ibid note 5

<sup>7</sup>Poverty, E., 2015. Millennium development goals. United Nations. Available online: <http://www.un.org/millenniumgoals/> (accessed on 18 October 2017).

<sup>8</sup>Van Teijlingen, E., Hundley, V., Matthews, Z., Lewis, G., Graham, W.J., Campbell, J., Hoop-Bender, T., Sheppard, Z. and Hulton, L., 2014. Millennium development goals: all good things must come to an end, so what next? *Midwifery*, 30(1), pp.1-2.

<sup>9</sup>Tripathi, V., Stanton, C., Strobino, D. and Bartlett, L., 2015. Development and validation of an index to measure the quality of facility-based labor and delivery care processes in sub-Saharan Africa. *PLoS One*, 10(6), p.e0129491.

<sup>10</sup>Tukker, A., Bulavskaya, T., Giljum, S., de Koning, A., Lutter, S., Simas, M., Stadler, K. and Wood, R., 2014. The global resource footprint of nations. Carbon, water, land and materials embodied in trade and final consumption calculated with EXIOBASE, 2, p.8.

<sup>11</sup>Ibid note 8.

of the SDGs while neglecting the others. Most of the resources in Kenya have been allocated to Goal 1 on reducing poverty, Goal 2 on Zero Hunger, Goal 3 Good Health and well-being, Goal 4 Quality Education and Goal 9 on Industry, Innovation and Infrastructure. Some of the goals have been either been ignored or neglected. The Sustainable development goals require trillions of dollars a year in order to be achieved in a sustainable manner.<sup>19</sup> Implementing the sustainable development goals globally is expected to take between \$ 5 -7 trillion in order to actualize those goals. There is a current investment gap of \$ 2.5 trillion dollars in developing countries.<sup>20</sup> Kenya is already facing budgetary constraints and the domestic resource mobilization is highly unlikely to raise the necessary capital for achieving these goals. The Millennium Development Goals were mainly funded by western nations out of moral imperative to stimulate economic growth and social development in developing countries. The growing trends in western countries of reduced external investments and donor fatigue have made it almost impossible for the sustainable development goals to be entirely funded by developed countries.<sup>21</sup>

The United Nations Development Fund argues that 50-80 % of the funding for sustainable development goals should come from domestic sources.<sup>22</sup> The Kenyan government should raise half the amount required to fund the sustainable development goals. The Kenyan government has not publicly stated how much it will cost to fund the sustainable development goals for the next fifteen years. Without publicly available data on government funding, the private sector and the donor community will face serious challenges in partnering with Kenya.<sup>23</sup>

The Sustainable development goals make perfect business sense and as such it is crucial to invite the business community to invest in the public sector.<sup>24</sup> The implementation of the sustainable development goals will lead to low un-employment rate and more business opportunities for the private sector.

It is therefore essential for the government of Kenya to partner with the private sector in implementing the sustainable development goals.

Kenya could explore the social impact bonds to solve current problems. Social Impact Bond is a tool that enables organizations to deliver outcome contracts and make funding for services conditional for achieving results.<sup>25</sup> Social impact bonds are very popular in developed countries such as the United Kingdom. Siberia is currently working on a social impact bond in addressing youth unemployment. Youth unemployment costs Siberia \$1.6 billion a year which is associated with various unemployment benefits, lost income taxes and productivity. Kenya could come up with a similar social impact bond to enable the private sector to finance social-economic projects.<sup>26</sup>

Kenya faces another major challenge of illicit financial flows. The unscrupulous business people in collusion with the corrupt public officers aid this through the movement of illegally acquired money and capital across borders. The sources of these funds could be corruption, bribery, organized crime or for the purposes of tax evasion.<sup>27</sup> The illicit financial flows take place through underground financial systems often ending up in tax havens, bulk transfer of funds across borders, hawala transactions and trade mis-invoicing. Most of these funds are swindled from government coffers and then taken to offshore tax havens where they are hidden from local authorities.<sup>28</sup> Over the last 50 years Africa has received donor funding of estimated \$1 trillion and equally over \$ 1 trillion has left African countries to developed world through illicit financial flows. Almost 60% of the Kenyan budget ends up un accounted for on a yearly basis.<sup>29</sup> Kenya has also seen massive corruption scandals with the Goldenberg Scandal totaling up to 12% of the GDP.<sup>30</sup> Agenda 2063, which Kenya has committed to implement, requires African governments to recover illicit financial flows and use this money to fund development agenda. Kenya can partner with developed countries in an attempt to recover the lost income and use these funds to finance the sustainable development goals.

Another solution to financing the sustainable development goals is the blended finance. The Kenyan government can use public funds to provide for de-risking instruments. These de-risking instruments can be used to incentivize the private sector to partner with the Kenyan government in spearheading development projects.<sup>31</sup>

<sup>19</sup>Griggs, D., Stafford-Smith, M., Gaffney, O., Rockström, J., Öhman, M.C., Shyamsundar, P., Steffen, W., Glaser, G., Kanie, N. and Noble, I., 2013. Policy: Sustainable development goals for people and planet. *Nature*, 495(7441), pp.305-307.

<sup>20</sup>Ibid 19

<sup>21</sup>Griggs, D., Stafford-Smith, M., Gaffney, O., Rockström, J., Öhman, M.C., Shyamsundar, P., Steffen, W., Glaser, G., Kanie, N. and Noble, I., 2013. Policy: Sustainable development goals for people and planet. *Nature*, 495(7441), pp.305-307.

<sup>22</sup>Griggs, D., Stafford-Smith, M., Gaffney, O., Rockström, J., Öhman, M.C., Shyamsundar, P., Steffen, W., Glaser, G., Kanie, N. and Noble, I., 2013. Policy: Sustainable development goals for people and planet. *Nature*, 495(7441), pp.305-307.

<sup>23</sup>Ibid note 22

<sup>24</sup>Costanza, R., Daly, L., Fioramonti, L., Giovannini, E., Kubiszewski, I., Mortensen, L.F., Pickett, K.E., Ragnarsdottir, K.V., De Vogli, R. and Wilkinson, R., 2016. Modelling and measuring sustainable wellbeing in connection with the UN Sustainable Development Goals. *Ecological Economics*, 130, pp.350-355.

<sup>25</sup>Gustafsson-Wright, E., Gardiner, S. and Putcha, V., 2015. The potential and limitations of impact bonds: Lessons from the first five years of experience worldwide. *Global Economy and Development* at Brookings.

<sup>26</sup>Albertson, K., Fox, C., Choi, J.H., LaBarbera, J., Chris, O.L. and Painter, G., 2017. *Payment by Results and Social Impact Bonds*. University of Chicago Press.

<sup>27</sup>Kar, D. and Freitas, S., 2013. Russia: illicit financial flows and the role of the underground economy.

<sup>28</sup>O'Hare, B., Makuta, I., Bar-Zeev, N., Chiwaula, L. and Cobham, A., 2014. The effect of illicit financial flows on time to reach the fourth Millennium Development Goal in Sub-Saharan Africa: a quantitative analysis. *Journal of the Royal Society of Medicine*, 107(4), pp.148-156.

<sup>29</sup>D'Arcy, M. and Cornell, A., 2016. Devolution and corruption in Kenya: Everyone's turn to eat?. *African Affairs*, 115(459), pp.246-273.

<sup>30</sup>Shulika, L.S., Muna, W.K. and Mutula, S., 2014. *MONETARY CLOUT AND ELECTORAL POLITICS IN KENYA*. of African Elections, p.196.

<sup>31</sup>Elliott, M., 2013. How blended finance can help create sustainable development. In *World Economic Forum*:

These de-risking instruments would be essential in financing projects with high social benefits that would be highly unlikely to materialize due to the high perceived risks associated with those projects. Blended finance solutions capitalize on partnerships across several sectors in order to make government projects financially viable.<sup>32</sup> The government of Kenya should entice the private sector into its development agenda with the aim of financing the sustainable developments. The Kenyan government can also use blended finance without the concession element to finance development projects in Kenya. These instruments include co-financing, partial-risk guarantee, advisory services and sound project structuring.<sup>33</sup> In order to finance sustainable development goals with blended finance the government of Kenya should identify and structure projects where blending is needed and make those projects viable for investment by the private sector. The government should also ensure that the concessional element can be phased out and in a reasonable time and pave way for a commercially viable venture.<sup>34</sup> It should also target projects that could be easily scaled up and achieve benefits beyond the original purpose.

#### Legislative Gaps

Kenya has made significant progress towards the attainment of the SDGs. The Kenya Vision 2030 which covers most of the thematic areas of the SDGs and the 2010 Constitution paved way for legislative reform that will enable the country to achieve the sustainable development goals. There are still pending legislations that have to be passed and sections of the existing law that have to be repealed in order to create the right legislative framework for the Sustainable Development Goals.

The National Assembly should pass the Senior Citizens Care and Protection bill which is currently pending in the Senate. The bill extends the protection of senior citizens to county governments with a bid to ensure that senior citizens are protected because they are the most vulnerable group and prone to poverty. Senior citizens do not have a regular source of income and they are the most vulnerable to poverty.<sup>35</sup> The Food and Security Bill is another critical piece of legislation that is currently pending in the National Assembly. The Food and the Security Bill gives effect to Article 43 of the Constitution on freedom from hunger and right to food of acceptable quality.<sup>36</sup> The Kenyan food supply depends on perennial rain and when there is insufficient rain, millions of people in Kenya become vulnerable to hunger and food insecurity. In order to mitigate vulnerable groups of Kenya from climate shocks and disasters, Kenya should pass the National Drought Management and Authority Bill.

The National Assembly should also pass Natural Resources Public Sharing bill. This legislation is necessary for the establishment of systems for the sharing of resource exploitation between exploiters, the national government, county government and the local communities. The legislation is further envisaged to establish an Authority, the natural resources benefits sharing Authority to deal with the administrative aspects. It is expected that the benefits derived from the natural resource exploitation will alleviate poverty within the local community to a greater degree.<sup>37</sup>

One of the strategies towards poverty eradication is through the review of the Pensions Act. The Pension's Act should be amended to make it mandatory for citizens working both in private sector and public sector to enroll in a pension scheme. The Act should also be amended to allow for the participation of private sector in the pension industry. The Income Tax Act should be reviewed to exempt those earning below the minimum wage from paying taxes. In the event that they have received a salary increment, income tax should not take effect until after a defined period later in the event that they are employed under permanent basis.

African countries have been battling poverty and hunger since the precolonial period. Hunger is usually detrimental to the economy and has an effect of 11% of the GDP. Although Agriculture contributes 20% of the GDP, Kenya is still labelled as a food deficit country. This is primarily because of the existence of commercial agriculture for cash crops as opposed to the staple food. Despite the agricultural potential of the country, Kenya has been ranked in the top 50 countries that are unable to provide food to their population. An estimated 1.6 million people suffer from chronic hunger.

Another Pending Legislation is the Medical Fund Bill which was introduced to the Parliament by Hon Alfred Kester. The Medical Fund Bill is aimed at providing free treatment to those suffering from cancer. This goal will go a long way in helping to achieve Goal 3 of the SDGs on health and well-being. In order to attain goal 3 of the SDGs, the parliament should also pass the Reproductive Healthcare Bill. The Reproductive healthcare Bill provides that National and County governments shall make available contraceptives and family planning services in order to realize the reproductive rights of women in the country. It also legalizes surrogacy motherhood and legally recognizes the surrogacy agreements between the surrogate mother and the parents. Under the bill any public hospital under the management of National and County government shall provide free pre-natal and post-natal care to mothers. The reproductive health bill is one of the most productive pieces of legislation that are instrumental in achieving the good health and well-being in the country. It will also help in combating the spread of HIV/AIDS. Further, the Reproductive Healthcare Bill shall be instrumental in reducing child mortality rates because it provides that county government and the National Government shall provide for free pre-natal and post-natal care.

There are some existing legislative gaps on some goals such as responsive consumption and production as set out in SDG 12. There is a lack of clear legislative framework on responsible consumption considering that worldwide, 1.3 tons of food worth over \$ 1 trillion end up in bins and garbage bags. It is irresponsible considering that while one section of the population is wasting food, the other is struggling to put

Geneva. <https://www.weforum.org/agenda/2015/07/how-blended-finance-can-help-create-sustainable-development>.

<sup>32</sup>Ibid note 31.

<sup>33</sup>Bhattacharya, A., Oppenheim, J. and Stern, N., 2015. Driving sustainable development through better infrastructure : Key elements of a transformation program. Brookings Global Working Paper Series.

<sup>34</sup>Ibid note 33.

<sup>35</sup>Oppenheim, B. and Powell, B.M., 2015. Legal Identity in the 2030 Agenda for Sustainable Development: Lessons from Kibera, Kenya. Open Society Foundations.

<sup>36</sup>Karaya, R.N., Onyango, C.A. and Amudavi, D.M., 2013. Fighting Hunger Together: A Case of Women Farmers' Participation in Women Groups in Mwala Division, Kenya. International Journal of Agricultural Management and Development, 3(3), pp.189-200.

<sup>37</sup>Musembi, C. and Scott-Villiers, P., 2015. Food Riots and Food Rights: The Moral and Political Economy of Accountability for Hunger in Kenya.

food on the table. In addition, commercial and residential areas lead in wasting energy in the country. There is also a major legislative gap on sustainable cities and communities. As the government focusses on the areas of the economy that require improvement, some sections that still pose a serious problem are left behind. With an increase in the number of people moving to the cities, there is a need for a comprehensive framework on how cities are managed. In the next two decades Kenya will experience a massive urban expansion as more people move to the cities. There is a need for legislative framework and policies on upgrading slums and easing population pressure in Kenya. There is also a need for a strong focus on the air quality and municipal waste management in Kenya.<sup>38</sup> Indeed some of the SDGs lack the necessary legislative and policy framework and such bills should be deliberated and passed in the National Assembly and Senate.

### Conclusion

The full implementation of the sustainable development goals in Kenya would enable Kenya to transition from developing country and become a developed country within 25 years. The Millennium Development Goals were a huge success in South East Asia, Latin America and China but this was never the case in Sub-Saharan Africa. One of the biggest challenges facing the implementation of the sustainable development goals is the investment gap of \$ 2.5 trillion a year in the developing world. Kenya should recover the funds lost through corruption and illicit financial flows and partner with the private sector to finance the development goals. The National Assembly and the Senate should also pass the pending legislations on sustainable development goals in order to create a framework for their implementation.

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<sup>38</sup>Hessling, G., 2014. Legal and institutional incentives for local environmental management. *Occasional Paper*, (17), pp.98-134.